

William L. Gavras, Esq.
LAW OFFICES OF GORMAN & GAVRAS
A Professional Corporation
2nd Floor, J & R Building
208 Route 4
Hagåtña, Guam 96910
Telephone: 472-2302
Facsimile: 472-2342

FILED
DISTRICT COURT OF GUAM

JUN 25 2007

MARY L.M. MORAN
CLERK OF COURT

Attorneys for Defendant
XIAN LONG YAO

**IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM**

UNITED STATES OF AMERICA,

CRIMINAL CASE NO. 07-00043

Plaintiff,

vs.

XIAN LONG YAO,

Defendant.

**DEFENDANT'S MEMORANDUM
OF LAW RE: DEFENSE OF
NECESSITY**

COMES NOW, Defendant, by and through his attorney of record, William L. Gavras, Esq., and for his Memorandum of Law Re: Defense of Necessity states as follows:

The defense of necessity is available when a person commits a particular offense to prevent an imminent harm which no available options could similarly prevent. The Ninth Circuit has stated that before a defendant may present evidence of a necessity defense, his offer of proof must establish that a reasonable jury could conclude: " (1) that he was faced with a choice of evils and chose the lesser evil; (2) that he acted to prevent imminent harm; (3) that he reasonably anticipated a causal relation between his conduct and the harm to be avoided; and (4) that there were no other legal alternatives

ORIGINAL

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to violating the law." *United States v. Aguilar*, 883 F.2d 662, 693 (9th Cir.1989); *United States v. Arellano-Rivera*, 244 F.3d 1119,1125-26 (9th Cir. 2001).

The Defendant will testify that when in mainland China he was forcibly sterilized pursuant to a Chinese government population control policy. He will further testify that the sterilization was botched and that after the procedure he fathered twins. He now fears prosecution in China for having fathered said twins.

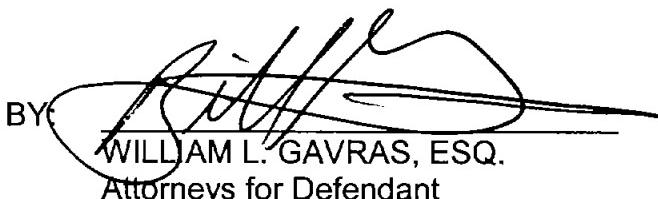
It is Defendant's position that the wrath of the Government he will be prosecuted and imprisoned upon his return to China for having exercised a basic human right (i.e. procreation). Such a prosecution is an evil that far outweighs the charge of illegal re-entry he is now facing. He believes fervently that the Chinese authorities will prosecute him immediately upon his return to China.

WEHREFORE Defendant believes he should be permitted to introduce evidence of his defense of necessity to the jury.

Respectfully Submitted,

LAW OFFICES OF WILLIAM L. GAVRAS

BY:


WILLIAM L. GAVRAS, ESQ.
Attorneys for Defendant
XIAN LONG YAO

Dated: June 25, 2007.

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CERTIFICATE OF SERVICE

I certify that I will cause to be served upon the Office of the United States Attorney, a true and correct copy of this document on or before June 25, 2007.

LAW OFFICES OF WILLIAM L. GAVRAS

Dated: June 25, 2007.

BY:


WILLIAM L. GAVRAS, ESQ.
Attorneys for Defendant
XIAN LONG YAO